

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

WILLIAM C. DEVEREAUX,	§	
	§	
<i>Plaintiff,</i>	§	
	§	
V.	§	CASE NO. 4:12cv73
	§	Judge Clark/Judge Mazzant
CITY OF DENTON, TEXAS, DENTON	§	
POLICE DEPARTMENT, JOHN DOE	§	
NO. 1, INDIVIDUALLY AND AS A	§	
DENTON, TEXAS POLICE OFFICER,	§	
AND JOHN DOE NO. 2, INDIVIDUALLY,	§	
	§	
<i>Defendants.</i>	§	

**ORDER ADOPTING IN PART REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On September 24, 2012, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that defendants City of Denton, Texas (the “City”), the Denton Police Department, John Doe No. 1, and John Doe No. 2's Second Motion to Dismiss Pursuant to Federal Rules 4(m), 12(b)(4), 12(b)(5) and 12(b)(6), Motion to Require Response to Claim of Qualified Immunity Pursuant to Rule 7, and Motion for More Definite Statement Pursuant to Rule 12(e) [Doc. #9] be granted in part and denied in part. On October 4, 2012, defendants filed a Motion for Partial Reconsideration of Report and Recommendation of United States Magistrate Judge and for Stay of Order to Disclose John Doe Defendants Pending Determination [Doc. #16]. On October 5, 2012, plaintiff filed objections to the Magistrate Judge's report and recommendation [Doc. #17].

A review of the plaintiff's response indicates that plaintiff did not lodge objections to the Magistrate Judge's dismissal of the following claims: (1) state law claims against the individual defendants; (2) all claims against the Denton Police Department; and (3) state law claims against the City of Denton. The court adopts these findings.

Plaintiff appears to object to the Magistrate Judge's recommendation to dismiss the section 1983 claims against the City. The court agrees with plaintiff only to the extent that it is premature to dismiss the City at this stage of the litigation. Therefore, the court does not adopt the portion of the report that recommends dismissal of the section 1983 claims against the City.

Defendants filed a Motion for Partial Reconsideration of Report and Recommendation of United States Magistrate Judge [Doc. #14], and for Stay of Order to Disclose John Doe Defendants Pending Determination. The motion addresses the John Doe defendants and the deferral of the limitations issue. The court agrees with the decision to defer deciding the limitations issue. Although the court understands the confusion in the ordering of the names of the John Doe defendants, plaintiff is entitled to know the names of the John Doe defendants. The names of the John Doe defendants shall be produced to plaintiff, and plaintiff shall file an amended complaint adding the named defendants. Whether plaintiff pleads a proper claim against the individual defendants can be addressed by appropriate motion of the defendants after service.

Having received the report of the United States Magistrate Judge, and considering the objections thereto filed by plaintiff [Doc. #17], this court is of the opinion that the findings and conclusions of the Magistrate Judge are correct in part and adopts the Magistrate Judge's report in part as the findings and conclusions of the court, with the exception of the recommended dismissal of the section 1983 claims against the City.

It is, therefore, **ORDERED** that defendants City of Denton, Texas, the Denton Police Department, John Doe No. 1, and John Doe No. 2's Second Motion to Dismiss Pursuant to Federal Rules 4(m), 12(b)(4), 12(b)(5) and 12(b)(6), Motion to Require Response to Claim of Qualified Immunity Pursuant to Rule 7, and Motion for More Definite Statement Pursuant to Rule 12(e) [Doc. #9] is granted in part and denied in part. Plaintiff's state law claims against the individual defendants, all claims against the Denton Police Department, and state law claims against the City of Denton are **DISMISSED** with prejudice.

It is further **ORDERED** that Defendants' Motion for Partial Reconsideration of United States Magistrate Judge and for Stay of Order to Disclose John Doe Defendants Pending Determination [Doc. #16] is **DENIED**.

So **ORDERED** and **SIGNED** this **21** day of **November, 2012**.



Ron Clark, United States District Judge